

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR
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November 12, 1999

Rick Piercy, President/CEO
High Desert "Partnership in Academic
Excellence" Foundation, Inc.
20702 Thunderbird Road
Apple Valley, CA 92307

Re: Public Works Case No. 99-052
Lewis Center for Earth Sciences Construction

Dear Mr. Piercy:

This letter constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under the California prevailing wage laws, and is made pursuant to Title 8 California Code of Regulations section 16001(a). Based upon my review of the documents submitted and an analysis of the relevant facts as presented, I have determined that the construction of the "Lewis Center for Earth Sciences" is a public work within the meaning of Labor Code section 1720(a).

In 1998, pursuant to Senate Bill 1415, the State Legislature appropriated up to \$2 million for the purchase of land and construction of a new "Lewis Center for Earth Science" in the Mojave Desert. The Center is an operating division of High Desert "Partnership in Academic Excellence" Foundation, Inc. (Foundation), a private, non-profit organization that operates a charter school and science center on the campus of the Apple Valley Unified School District.

The funds appropriated by the State Legislature were paid to the City of Apple Valley (City), which administers their expenditure on the Center's construction. The Foundation oversees the construction of the Center. Among other duties, the Foundation is a party to the construction contracts and incurs bills which the City pays upon receipt of proper documentation. It is expected that Center construction costs will exceed \$1.25 million.

Labor Code Section 1720(a) defines public works to mean: "Construction, alteration, demolition, or repair work done

Letter to Mr. Rick Piercy
Re: PW#99-052
November 12, 1999
Page 2

under contract and paid for in whole or in part out of public funds..."

The building of the Center is construction done under contract. The fact that the Foundation, a private entity, is a party to the construction contracts is of no consequence. Section 1720(a) does not require that a public entity be a party to a construction contract for a project to be deemed a public works.¹ Furthermore, even though the Foundation is overseeing the construction of the Center, the funds used to finance the construction of the Center are public funds because they were given to and are administered by the City.

For the foregoing reasons, the construction of the Center is a public works on which prevailing wages must be paid.

I hope this determination satisfactorily answers your inquiry.

Sincerely,



Stephen J. Smith
Director

cc: Daniel M. Curtin, Chief Deputy Director and Acting
Chief, DLSR-
Henry P. Nunn, Chief, DAS
Marcy Vacura Saunders, Labor Commissioner
Vanessa Holton, Assistant Chief Counsel

¹ Lusardi Construction Company v. Aubry (1992) 1 Cal.4th 976, 4 Cal.Rptr.2d 837; Precedential Decision on Appeal # 93-039 Valley Rose Estates Project-City of Wasco, August 26, 1995.